MALAYSIAN REPORTS

Yap Chin Hock v Minister of Home Affairs & Anor and other applications

HIGH COURT (PENANG) - CRIMINAL APPLICATION NOS 44-20-89, 44-23-89, 44-26-89 AND 44-29-89
EDGAR JOSEPH JR J
18 AUGUST 1989

Administrative Law - Habeas corpus - Conditions precedent to making of detention orders

Preventive Detention - Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether extension order amounted to new ground for detention - Meaning of 'for a period not exceeding two years from the date of such order' - Whether overlap between detention order and extension order amounted to unlawful detention - Whether conditions precedent satisfied - Whether irregularity in form amounted to unlawfulness - Whether extension order can cover a period exceeding the duration of parent Act - Whether remoteness in time amounted to unlawfulness - Federal Constitution art 5(1) - Dangerous Drugs (Special Preventive Measures) Act 1985, ss 1(3), 1(5)(b)(i), 6(1), 7, 11A(1) & 11A(3).

The four applicants were arrested and the respondent issued a detention order under powers granted by s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. Under the original detention order, the applicants were to be detained for two years. Upon the expiry of the detention period, the respondent issued a further extension order detaining them for a further period of two years.

The first applicant challenged the validity of the detention order and directions to extend the order on the following grounds:

(1) The first applicant was detained on 10 July 1986 and the detention order was for a period of two years with effect from 12 July 1986. Subsequently, an extension order was issued on 9 July 1988 and it was to take effect from 11 July 1988. This being the case, the Minister acted ultra vires since the phrase 'for a period not exceeding two years from the date of such order' should be interpreted strictly to refer to the date of arrest and detention (10 July 1986) and not to the date the order came into force (ie 12 July 1986).

(2) The Minister failed to act before the expiry of the initial detention order and direct that the detention order be extended commencing immediately upon its expiration. Instead, the Minister stated that the extension order commenced on the last day of the life of the initial detention order.

(3) Continued detention under the extension order was unauthorized because he had been denied the opportunity of making representations in accordance with s 11A(3) of the Act, especially since the grounds for the extension order were different from those of the initial detention order.

(4) The two conditions precedent under s 6(1) of the Act, ie that the Minister be satisfied that (a) the applicant has been or is associated with drug trafficking; and (b) that it is in the public interest to order detention of the applicant, were not satisfied. Only condition precedent (b) had been satisfied.

(5) The Minister failed to apply his mind adequately to the issue of the detention order because he set out the objects or purposes of the detention in the alternative.

(6) The extension order is contrary to s 1(3) of the Act which states that the Act shall only continue in force for five years till 14 June 1990 and the applicant's detention is extended to 10 July 1990.

(7) Both the detention and extension orders were issued in a mechanical fashion and the Minister had not kept present in mind the question whether it was in fact necessary to make such orders.

The second applicant argued that the past activities which were relied on in the allegations of fact were not sufficiently proximate and were too remote in time to justify the detention order. Finally, the third applicant argued that the grounds for the making of the detention order revealed international elements and that the extension order did not and that they therefore consisted of two separate grounds of detention.

Held, dismissing all the applications:

(1) Parliament intended that the phrase 'for a period not exceeding two years from the date of such order' in the Act should mean 'from the date the order came into force.' This purposive interpretation of the section accords with good sense.

(2) Although the periods between the initial detention order and the extension order overlap, there is no break in the chain of authorization to render the detention unlawful. This is only a trifling irregularity, and the maxim of de minimis non curat lex (the law does not concern itself with trifles) applies.

(3) Comparing the grounds of the detention order and the extension order, the differences are immaterial and do not therefore constitute a new ground for detention.

(4) The detention order must be read together with the grounds for detention and the allegations of fact which are stapled together. It is manifestly clear that their contents are incorporated by reference to the detention order and all three documents reveal that both conditions precedent have been fulfilled.

(5) Any defect in the detention order in setting out the object or purpose of detention in the alternative is only a defect of form and not substance. It cannot be said that the executive had not applied its mind to the desirability of detaining the detainee.

(6) Section 1(4) of the Act states that the Act may, by resolution of both Houses of Parliament be extended for a further period as may be specified in the resolution. Although Parliament has yet to pass such a resolution, they are empowered to do so before its date of expiry. Furthermore, s 1(5)(b)(i) provided categorically that upon the expiration of the Act, any order under s 6 or s 7 shall cease to have effect and the applicant will accordingly have to be released if Parliament does not extend the duration of the Act.

(7) The subjective satisfaction of the Minister cannot be questioned. Ordinary criminal laws are meant to complement preventive detention laws and they are not substitutes for one another. The fact that the Minister chose to invoke the Act was not evidence that he failed to consider a course in criminal prosecution rather than preventive detention.

(8) The delay in the detention of the second applicant was explained by the Deputy Minister and the submission on proximity is unacceptable.

(9) Scrutinizing the grounds of the detention order and the extension order against the third applicant, both grounds relate to drug trafficking and both are in pari materia and do involve an international element.

Cases referred to

1 *Jayaraman a/l Arumugam* v *Minister of Home Affairs, Ma-*

laysia & Anor [Penang High Court Criminal Application No 44-4-89] (refd)
2 *A Konai* v *State of Bengal* AIR 1973 SC 300
3 *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 (folld)
4 *Kanchanlal* v *State of Gujarat* AIR 1979 SC 1945 (refd)
5 *Yeap Hock Seng* v *Minister of Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 (folld)

Legislation referred to
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 1(3), 1(5)(b)(i), 6(1), 7, 11A(1), 11A(3)
Federal Constitution art 5(1)

Karpal Singh for the applicants.
Abu Samah bin Nordin (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Edgar Joseph Jr J: These proceedings consisted of four separate applications, the reference numbers being 20/89, 23/89, 26/89 and 29/89, for writs of habeas corpus whereby the applicants had challenged the validity of detention orders and directions extending their duration -'extension orders' - made by the Minister of Home Affairs ('the Minister'), or the Deputy Minister of Home Affairs ('the Deputy Minister') as the case may be, in purported exercise of his powers under the provisions of ss 6(1) and 11A(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The applicants were all represented by Mr Karpal Singh while the respondents, the Minister of Home Affairs and the Pengarah, Pusat Pemulihan Akhlak, were represented by Senior Federal Counsel, Encik Abu Samah bin Nordin.

There were points of law common to all applications but no order for consolidation was sought on grounds of convenience. Accordingly, the applications were argued seriatim and whenever common points were involved my attention was drawn to this. I propose therefore to adopt the same procedure for greater clarity and more expeditious disposal.

The history of the matter which called for the consideration of the court in each case will appear from the contemporary documents, such as the detention orders, the extension orders, the grounds for making the same as well as the allegations of fact upon which they were based and, in addition, from the affidavits affirmed to by the relevant functionaries. If, and when necessary, I shall refer to these. All references to sections shall, unless the context otherwise requires, be to the Act.

First of all, I shall take Criminal Application 44-20-89 Yap Chin Hock. This applicant had sought a writ of habeas corpus ad subjiciendum whereby he challenged both the validity of the detention order dated 10 July 1986 ('the detention order') authorizing his detention for a period of two years with effect from 12 July 1986 and a direction dated 9 July 1988 that the duration thereof, be extended for two years with effect from 11 July 1988 ('the extension order'), both made by the Minister in purported exercise of his powers under ss 6(1) and 11A(1) of the Act, respectively.

By his affidavit (encl 12) affirmed to on 6 June 1989, Encik Azman bin Abdul Aziz, who at all material times was the assistant secretary to the Ministry of Home Affairs and whose responsibility included the processing of case files relating to orders of detention under the Act, deposed as follows:

(1) On 23 June 1986, he had received the case file relating to the applicant which contained a recommendation that an order of detention under s 6(1) of the Act be made against the applicant.
(2) On 24 June 1986, he had received a report of the inquiry officer to the Minister under s 5(4) of the Act in respect of the applicant wherein the inquiry officer had stated that he was satisfied that there were reasonable grounds for believing that the applicant had been associated with activities relating to or involving the trafficking of dangerous drugs.
(3) On 10 July 1986 the applicant's case file, together with the report of the inquiry officer under s 5(4) of the Act, had been submitted for consideration by the Minister.
(4) On the same day, he had prepared and signed the grounds and the allegations of fact upon which the detention order was based in accordance with s 9(2)(b) of the Act for the purpose of enabling the applicant to make representations to the advisory board.

The detention order signed by the Minister was in the following terms:

> That I, the Minister of Home Affairs, being satisfied that it is necessary that this order be made against the person named hereunder to prevent him from carrying on activities relating to or connected with the trafficking of dangerous drugs.
>
> | Name | Identity Card No |
> |---|---|
> | Yap Chin Hock | 7159447 |
>
> Accordingly, in the exercise of the powers conferred upon me under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, I do by this order hereby direct that the above named person be detained for a period of two years commencing from 12 July 1986 at the Rehabilitation Centre, Pulau Jerejak, Pulau Pinang, or such other place I may direct from time to time.
>
> Signed under my hand this 10th day of July 1986.
>
> sgd Illegible,
> Minister of Home Affairs,
> Malaysia
> Seal

The grounds upon which the detention order was based were as follows:

> That you have been or are involved in activities relating to or connected with the trafficking of dangerous drugs.

The allegations of fact upon which the detention order was based were as follows:

You are a trafficker in heroin, active in the Jalan Jati area, Off Jalan Imbi, Kuala Lumpur, since the month of December 1985. You did traffic in heroin in packet form, costing from $140 to $150 per packet. Between December 1985 and March 1986 you are estimated to have sold about 670 to 680 packets of heroin.

The extension order signed by the Deputy Minister was in the following terms:

Whereas, on 10 July 1986, a detention order was made under s 6(1) Dangerous Drugs (Special Preventive Measures) Act 1985, against the person named hereunder ordering that he be detained for two years commencing from 12 July 1986

Name	Identity Card No
Yap Chin Hock	7159447

Whereas, I the Minister of Home Affairs, being satisfied that in the interest of public order it is necessary that the said detention order be extended on the same grounds upon which the original order was made.

Accordingly, in exercise of the powers conferred upon me by s 11A of the Dangerous Drugs (Special Preventive Measures) Act 1985, I, the Minister of Home Affairs, Malaysia, do hereby order that the abovenamed person be detained further for two years from the date of expiry of the detention order, ie commencing from 11 July 1988 at the Rehabilitation Centre, Pulau Jerejak, Pulau Pinang, or at such other places I may direct, from time to time.

Dated 9 July 1988.

sgd Illegible
Dato' Megat Junid bin Megat Ayob
Deputy Minister of Home Affairs
Malaysia
(Rujukan: KDN S 205/1182/5-5/68)

The grounds for the extension order were in the following terms:

That you have been involved in activities connected with the trafficking of dangerous drugs.

The allegations of fact upon which the extension order was based were in the following terms:

You are a trafficker in heroin, active in the Jalan Jati area, Off Jalan Imbi, Kuala Lumpur, since the month of December 1985. You did traffic in heroin in packet form, costing from $150 per packet. Between December 1985 and March 1986 you are estimated to have sold 670 to 680 packets of heroin.

By Order of
the Minister of Home Affairs

sgd Illegible
Abdul Rahim Bin Hashim
Assistant Secretary
Ministry of Home Affairs

Date: 9 July 1988
Rujukan: KDN S 205/1182/5-68

Before me, counsel for the applicants had attacked the detention order and the extension order on a number of grounds.

In the first place, it was argued that in making the detention order concerned, the Minister had acted ultra vires the powers conferred upon him by s 6(1) of the Act which provides:

(1) Whenever the Minister, after considering -

(a) the complete report of investigation submitted under subsection (3) of section 3; and

(b) the report of the Inquiry Officer submitted under subsection (4) of section 5,

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years from the date of such order.

In particular, it was argued that the detention order having been dated and signed on 10 July 1986, the maximum permissible period of detention under it was two years 'from the date of such order', that is to say, until midnight of 9 July 1988 and no longer. But, as in this case the detention order had directed that the applicant be detained for a period of two years from 11 July 1986, it was said that the applicant's initial detention was not in accordance with law and so in violation of art 5(1) of the Federal Constitution. To emphasize the point, counsel for the applicants directed my attention to a sample detention order issued in respect of another case wherein the period of detention was expressed to commence from the date the order was signed.

Now, if the words 'for a period not exceeding two years from the date of such order' in s 6(1), were read in isolation, I cannot help but agree that they would mean that the period stipulated therein should run from the date the order is signed. But, once those words are read subject to the context in which they appear, I am driven to the inevitable conclusion that Parliament must have intended that they should mean from the date the order came into force. In arriving at this conclusion, I have, as in my recent judgment in *Jayaraman a/l Arumugam* v *Minister of Home Affairs, Malaysia & Anor*[1] relied on a purposive interpretation in order to produce a result which accords with good sense. Accordingly, this ground of objection fails.

In the second place, it was argued that the Minister had directed that the duration of the detention order aforesaid be extended for a further period of two years with effect from 11 July 1988, contrary to the powers conferred upon him by s 11A(1) of the Act, which reads as follows:

The Minister may at any time before the expiration of the duration of -

(a) a detention order made under subsection (1) of section 6;

(b) a restriction order made under subsection (3) of section 6; or

(c) a detention order suspended under subsection (1) of section 7 (hereinafter referred to as a 'suspended detention order').

direct that the duration of the order be extended for such further period, not exceeding two years, as he may specify, commencing immediately upon the expiration of its then current duration ...

Counsel stressed that the requirements of s 11A(1) for the valid exercise by the Minister of the power to extend the duration of the detention order were two-fold, namely:

(1) the Minister had to act before the expiration of the duration of the initial detention order; and
(2) the Minister had to direct that the detention order be extended for a further period not exceeding two years commencing immediately upon the expiration of its current duration.

It was argued that in the instant case the second of these requirements had not been satisfied in that the direction extending the duration of the Detention Order was expressed to take effect not 'immediately upon the expiration of the current duration of the detention order', but upon the last day of its life, namely, 11 July 1988, with the result that the detention of the applicant was not in accordance with law and so contrary to art 5(1) of the Federal Constitution.

Upon the facts stated, it would appear that the detention order and the Minister's direction extending this applicant's detention overlapped but there was no break in the chain of authorization. Where trifling irregularities or even infractions of the strict letter of the law of little or no consequence are brought to the notice of the court, the maxim de minimis non curat lex (the law does not concern itself about trifles) is of frequent practical application. As was well put by Sir W Scott in the *Reward* 2 Dod 265, 269, 270: 'the court is not bound to a strictness at once harsh and pedantic in the application of statutes. The law permits the qualification implied in the ancient maxim, de minimis non curat lex. If the deviation were a mere trifle, which if continued in practice, would weigh little or nothing on the public interest, it might properly be overlooked.' Accordingly this ground of objection fails.

Thirdly, it was argued that the applicant's continued detention on the authority of the extension order dated 9 July 1988 was unauthorized by law in that he had been denied the opportunity of making representations against the same in accordance with s 11A(3) of the Act, having regard to the fact that the grounds for the applicant's detention under the extension order were different from those under the detention order.

If the grounds for the detention order and the extension order are compared, it will be obvious that the grounds relied upon for making them were, with a few qualifications I shall presently mention, the same. Those qualifications are these: the words 'atau sedang' (or are) in the reasons for detention at p 3, and the words 'atau yang melibatkan' (or involving) and 'ada kaitan dengan apa-apa aktiviti' (are associated with any activity) and 'atau melibatkan' (or involving) in the grounds for the detention order do not appear in the grounds for the extension order.

In my view, these differences, if they can be termed such, are immaterial. I am fortified in this view by the fact that the allegations of fact upon which the detention order and the extension order were based are in pari materia as well as by the affidavits filed in opposition to the application. It is also not without significance that this applicant studiously refrained from making representations to the advisory board when he was advised as to his right to do so at the time of service of the detention order and the extension order. Accordingly, this ground of objection also fails.

Fourthly, it was argued that there were two conditions precedent which are required to be fulfilled under s 6(1) of the Act before the Minister could exercise his powers to detain a subject, namely, that after considering the complete report of investigation and the report of the inquiry officer, he must be satisfied that:

(1) the person concerned has been or is associated with any activity relating to or involving the trafficking in dangerous drugs; and
(2) it is necessary in the interest of public order that such person be detained.

It was submitted that on the face of the detention order only the second condition precedent had been fulfilled.

If the grounds and the allegations of fact (which are stapled to the detention order) are read together - as I think they must - it is manifestly clear that their contents are incorporated by reference into the detention order. Once this is done, and the three documents are read together, it is clear beyond peradventure that both the conditions precedent aforesaid are fulfilled. Accordingly, this ground of objection also fails.

Fifthly, it was argued that the grounds for detention appearing in the detention order, are stated in the disjunctive, which it was said gives rise to the inference that the Minister did not apply his mind adequately or at all to the need for this applicant's detention, thereby rendering this applicant's initial and continued detention unlawful quite apart from this applicant being prejudiced in making adequate representations to the advisory board. The Indian Supreme Court case of *A Konai* v *State of Bengal*[2] was cited in support.

In *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri Malaysia*,[3] one of the points argued by counsel for the detainee was that the order of detention was bad for duplicity in that it specified more than one ground in the alternative. The argument did not commend itself to the Federal Court; it held that the defect (if any) in the detention order in setting out the object or purposes of the detention in the alternative was a defect of form only and not of substance. The result was that it could not be said that the executive had not adequately applied its mind to the desirability of detaining the detainee. Suffian FJ (as he then was) drew attention to the fact that one of the reasons

why the Indian courts insisted on strict compliance with the law was because there the power of detention was often exercisable by civil servants who are not answerable politically to Parliament and whose action must therefore be scrutinized closely by the court, whereas here, the power of detention has not been delegated to civil servants. For the same reasons, I too, would reject this ground of objection.

Sixthly, it was argued that the extension order dated 9 July 1988 extends the detention of the applicant until 10 July 1990 in contravention of s 1(3) of the Act which provides that the Act shall continue in force for only five years from the date appointed by the Minister, which is 15 June 1985; that is to say, until 14 June 1990.

I note, however, that s 1(4) of the Act states that the Act may, by resolution passed by both Houses of Parliament, be extended for a further period or periods as may be specified in the resolution. Moreover, s 1(5)(b)(i) provides categorically that upon the expiration of the Act any order under s 6 or s 7 shall cease to have effect and the officer-in-charge shall forthwith release from custody every person detained therein pursuant to the detention order. It is true that s 1(5)(b)(i) makes no mention of extension orders under s 11A(1), but in my opinion, this last mentioned provision must be taken as included by necessary implication for it operates merely to extend the life of a detention order. Accordingly, this ground of objection also fails.

Finally, it was argued that the detention order and the extension order were passed in a mechanical fashion in that the Minister had not kept present in his mind the question whether it was necessary to make such orders when an ordinary criminal prosecution could well have served the purpose. My attention was drawn by counsel to the Indian Supreme Court decision of *Kanchanlal* v *State of Gujarat*.[4] In my opinion, this ground seeks to question the subjective satisfaction of the Minister and so falls within the prohibition imposed by *Karam Singh*.[3] Also, the ordinary criminal laws of the country and the statutes relating to preventive detention are not substitutes for each other but are complimentary.

As was said in the case of *Yeap Hock Seng* v *Minister for Home Affairs Malaysia & Ors*[5] at p 284:

> Mere circumvention of the ordinary process of law cannot by itself amount to mala fides as otherwise this would in most cases virtually result in rendering moribund and impotent the laws legally enacted to provide for preventive detention for specific purposes ...

It follows that an order of preventive detention is not illegal simply because the Minister had failed to consider whether an ordinary criminal prosecution could well have served the purpose. In any event, there was no evidence that the Minister had failed to take into account this consideration. In the result, this application must be and is dismissed.

Next, I shall take Criminal Application 44-23-89 Cheong Lee Keat. In the case of this applicant, it seems to me that the only new point advanced on his behalf which merits consideration, may be stated thus. It was argued that the past activities relied on in the allegations of fact were not sufficiently proximate in point of time to justify the making of the detention order under the Act. In particular, it was argued that the last allegation of fact related to an alleged incident in 1981, which incident it was said was too remote in point of time in relation to the making of the detention order under the Act. I regret I find this submission unacceptable as the Deputy Minister had in his supporting affidavit affirmed to on 16 June 1989 (encl 14), explained the apparent delay adequately and clearly. Moreover, he had also in his principal affidavit affirmed to on 6 June 1989 (encl 10) explained why it was necessary to make the extension order. Accordingly, this application must be and is dismissed.

I shall next deal with Criminal Application 44-26-89 Hua Kim Oi. In the case of this applicant, it seems to me, that there were two new points advanced on his behalf which merit consideration and they may be stated thus. It was submitted that if the grounds for making the detention order and the grounds for making the extension order were compared, it would be seen that whilst the former referred, inter alia, to international elements, the latter did nothing of the sort. I find this submission untenable for two reasons. Firstly, the grounds for making the detention order and those for making the extension order both relate to the applicant's drug trafficking activities which, of course, are activities contemplated by s 6 of the Act. Secondly, if the allegations of fact relating to the detention order and the extension order are compared with a discerning eye, it will be seen that they are in pari materia. They both relate to this applicant's drug trafficking activities and do involve an international element. In the circumstances, the difference in the grounds for the detention order and those for the extension order are immaterial and so there is nothing in this point. In the result, this application must be and is dismissed.

Finally, I shall take Criminal Application 44-29-89 Seem Ching Chin. In the case of this applicant, it seems to me that no new point was advanced on his behalf. In the result, this application too, must be and is, dismissed.

Applications dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Kevin Tan Yew Lee*